

Easterling, Deborah

2018-364 WS

From: Elizabeth Todd <elizabeth.todd@nelsonmullins.com>
Sent: Friday, November 16, 2018 4:42 PM
To: PSC_Contact
Subject: On Behalf of Jack Smith - Complaint Form for 46 & 36 Driftwood Cottage Lane (Halwig and Noller Residences)
Attachments: LTRT Chad Campbell with Complaint- Halwig_Noller_DIUC.PDF

To Whom it may concern:

Please find a copy of the attached letter and Complaint regarding the Halwig and Noller residences.

Best,

NELSON MULLINS
 Jack Smith
jack.smith@nelsonmullins.com (843) 534-4300
 151 Meeting Street Suite 600 | Charleston SC 29401

On behalf of Jack Smith,



ELIZABETH TODD
 ATTORNEY AT LAW
 elizabeth.todd@nelsonmullins.com
 LIT. RT. CENTER | SUITE 600
 151 MEETING STREET | CHARLESTON SC 29401
 T 843.534.4802 F 843.722.8700
 NELSONMULLINS.COM

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Newman Jackson Smith
T 843.634.4309 F 843.634.4360
jack.smith@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

151 Meeting Street | Sixth Floor
Charleston, SC 29401-2239
T 843.853.6200 F 843.722.8700
nelsonmullins.com

November 16, 2018

Via Electronic and US Mail

Mr. Chad Campbell
Office of Regulatory Staff
Supervisor, Consumer Services
1401 Main Street, Suite 900
Columbia, South Carolina 29201

RE: Daufuskie Island Utility Company, Inc.
Michael and Nancy Halwig
NMRS File No.: 54041/09000
Stephan and Beverly Noller
NMRS File No.: 055561/09000

Dear Chad:

I am providing you a copy of the Complaint and Information being filed by email at contact@psc.sc.gov today. The Complaint involves the matters we have discussed over several months regarding the Daufuskie Island Utility Company and its refusal to restore service and replace the mains for water and sewer service to all of the lots along Driftwood Cottage Lane above an area of that road that was washed away during Hurricane Matthew over two years ago. The facts and information in the Complaint speak for themselves, but please let me know if you have any questions or would like to discuss this Complaint.

By copy to Thomas Gressette, Esquire we are providing a courtesy copy to the Daufuskie Island Utility Company as well.

With best regards, I am

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Jack'.

Newman Jackson Smith

NJS:et

cc: Thomas P. Gressette, Jr., Esquire (w/encl.)

Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-51
Fax: 803-896-51
www.psc.sc.g
Text PSCAGENDAS to 394

To receive an alert when Meeting Agendas are released

Individual Complaint Form

Date*: 11/16/2018

Complainant or Legal Representative Information:		* Required Fields	
Name *	Newman J. Smith		
Firm (if applicable)	Nelson Mullins Riley & Scarborough LLP		
Mailing Address *	151 Meeting Street/PO Box 1806		
City, State Zip *	Charleston	SC	29401
Phone *	843-534-4309		
E-mail	jack.smith@nelsonmullins.com		
Name of Utility Involved in Complaint: * Daufuskie Island Utility Company			

Type of Complaint (check appropriate box below.) *

<input type="checkbox"/> Billing Error/Adjustments	<input type="checkbox"/> Deposits and Credit Establishment	<input type="checkbox"/> Wrong Rate	<input checked="" type="checkbox"/> Refusal to Connect Service
<input type="checkbox"/> Disconnection of Service	<input type="checkbox"/> Payment Arrangements	<input type="checkbox"/> Water Quality	<input checked="" type="checkbox"/> Line Extension Issue
<input type="checkbox"/> Service Issue	<input type="checkbox"/> Meter Issue		
<input type="checkbox"/> Other (be specific) _____			

Have you contacted the Office of Regulatory Staff (ORS)? * ☒ Yes ☐ No Name of ORS Contact: Mr. Chad Campbell

Concise Statement of Facts/Complaint: * (This section must be completed. Attach additional information to this page if necessary.)

Daufuskie Island Utility Company (DIUC) required customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) to install replacement water and sewer mains that serve part of Driftwood Cottage Lane for the mains destroyed by Hurricane Matthew. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. (See continuation, attached.)

Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

The customers Halwig and Noller request the Commission require DIUC to immediately restore service through the replacement lines and to compel DIUC to refund the full costs paid by the customers for the replacement lines. (See continuation, attached.)

****I GIVE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA PERMISSION TO PUBLISH THIS COMPLAINT AND ITS CONTENTS ON THE COMMISSION'S WEBSITE (dms.psc.sc.gov), AND I UNDERSTAND SUCH INFORMATION MAY BE SUBJECT TO PUBLIC SCRUTINY OR FURTHER RELEASE.** ☒ Yes ☐ No

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on 11/16/18
Date *

and know the contents thereof, and that said contents are true.

J. MICHAEL HALWIG
Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

Internal Use Only	
Processed By	Date

Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-5100

Fax: 803-896-5199

www.psc.sc.gov

Text PSCAGENDAS to 39492

To receive an alert when Meeting Agendas are released

Individual Complaint Form

Date*: 11/16/2018

Complainant or Legal Representative Information: * Required Fields

Name * Newman J. Smith
Firm (if applicable) Nelson Mullins Riley & Scarborough LLP
Mailing Address * 151 Meeting Street/PO Box 1806
City, State Zip * Charleston SC 29401 Phone * 843-534-4309
E-mail jack.smith@nelsonmullins.com

Name of Utility Involved in Complaint: * Daufuskie Island Utility Company

Type of Complaint (check appropriate box below.) *

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Billing Error/Adjustments | <input type="checkbox"/> Deposits and Credit Establishment | <input type="checkbox"/> Wrong Rate | <input checked="" type="checkbox"/> Refusal to Connect Service |
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| <input type="checkbox"/> Service Issue | <input type="checkbox"/> Meter Issue | | |
| <input type="checkbox"/> Other (be specific) _____ | | | |

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Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on 11/16/18
Date *

and know the contents thereof, and that said contents are true.

Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

Internal Use Only

Processed By	Date
H.B.	

Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-5100
Fax: 803-896-5199
www.psc.sc.gov
Text PSCAGENDAS to 39492

To receive an alert when Meeting Agendas are released

Individual Complaint Form

Date*: 11/16/2018

Complainant or Legal Representative Information:

* Required Fields

Name * Newman J. Smith

Firm (if applicable) Nelson Mullins Riley & Scarborough LLP

Mailing Address * 151 Meeting Street/PO Box 1806

City, State Zip * Charleston SC 29401 Phone * 843-534-4309

E-mail jack.smith@nelsonmullins.com

Name of Utility Involved in Complaint: * Daufuskie Island Utility Company

Type of Complaint (check appropriate box below.) *

- | | | | |
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| <input type="checkbox"/> Service Issue | <input type="checkbox"/> Meter Issue | | |
| <input type="checkbox"/> Other (be specific) _____ | | | |

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Daufuskie Island Utility Company (DIUC) required customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) to install replacement water and sewer mains that serve part of Driftwood Cottage Lane for the mains destroyed by Hurricane Matthew. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. (See continuation, attached.)

Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

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STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

VERIFICATION

Complainant's Signature (MUST BE SIGNED, DO NOT PRINT)

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on 11/16/18
Date *

Internal Use Only

Processed By	Date
H.E.	

and know the contents thereof, and that said contents are true.

Beverly P. Noller
Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)
Beverly P. Noller

Public Service Commission of South Carolina, Halwig and Noller Complaint
 RE: Daufuskie Island Utility Commission filed November 16, 2018
 Page 1

Continuation of Statement of Facts/Complaint

Daufuskie Island Utility Company (DIUC) has failed to provide adequate and proper service to its customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) since October of 2016. DIUC refused to replace water and sewer mains that serve part of Driftwood Cottage Lane since they were destroyed by Hurricane Matthew. DIUC also refused to replace the mains destroyed by the storm with alternative mains to serve the customers' homes. Instead, DIUC forced the Halwigs and Nollers to install replacement water and sewer mains for all lots on Driftwood Cottage Lane since they were destroyed by Hurricane Matthew with the promise that DIUC would restore water and sewer service once the mains were replaced. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. Even though DIUC promised to restore service once the customers replaced the mains, DIUC has failed to do so and continues to refuse to provide adequate and proper service.

Plaintiffs are John and Nancy Halwig, the owners of 46 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, South Carolina, and Beverly and Stephen Noller, the owners of 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, South Carolina.

Plaintiffs' properties are within Melrose Plantation on Daufuskie Island. The Driftwood Cottage Lane area within Melrose has suffered from Hurricane Matthew which struck on October 8, 2016. As a result of the erosion from Hurricane Matthew, a portion of Driftwood Cottage Lane was washed out, and with it water and sewer mains owned by Daufuskie Island Utility Company. While the homes to the south of the washout on Driftwood Cottage Lane continued to have service from DIUC, the homes and lots north of the washout, particularly the homes of John and Nancy Halwig and Beverly and Stephen Noller, did not. When the utility company was asked when it would restore the utility service to these homes, the utility stated in a letter that it would not be able to restore service and that the two families on that street would have to provide an alternative extension of mains and utilities at their own, personal cost. When the Halwigs filed a Complaint with the South Carolina Office of Regulatory Staff ("ORS") regarding the refusal of DIUC to restore service, the ORS replied that the statutes do not provide a definitive time frame within which service has to be restored.¹ Based on this response, DIUC opted not to replace the mains or restore service at all.

Because DIUC refused to replace the mains and utilities, the Halwigs and Nollers were required to find an alternate route for mains to replace the one disconnected at the washout of Driftwood Cottage Lane to the remainder of the mains under Driftwood Cottage Lane. Several other lots in addition to these two developed lots exist and could utilize the mains. Because the Driftwood Cottage Lane neighborhood is adjacent to two holes of the Melrose Golf Course and a road across the golf course called Martinangel Lane, which did have utility mains under it, the logical

¹ See letter from ORS to Dr. Halwig dated December 2, 2016, ORS file # 2016-W-1682.

Public Service Commission of South Carolina, Halwig and Noller Complaint
RE: Daufuskie Island Utility Commission filed November 16, 2018
Page 2

place to seek alternative routing for replacement mains to Driftwood Cottage Lane would be through the golf course property. The golf course property, owned by the Melrose Resort owner, was in the process of going through bankruptcy. In spite of this, the Halwigs and Nollers persevered and eventually were able to get the former lender and now owner of the Melrose Golf Course to agree to the easement to allow the lines to be installed near the 17th hole of the golf course. The process of obtaining the easement took more than a year, and throughout that time, the Halwigs and Nollers remained without water and sewer services at their properties. DIUC did not assist in finding the alternate route for the mains or in securing the necessary easement for installation.

Once the Halwigs and Nollers obtained the easement, the water and sewer mains could be installed through the golf course property. On January 30, 2018, DIUC provided the Halwigs and the Nollers with a Customer Service Agreement, which detailed the terms under which DIUC would provide service to the Halwigs and the Nollers. The Customer Service Agreement provides that the Halwigs and Nollers were to install the mains at their own expense. The Customer Service Agreement required the Halwigs and the Nollers to provide DIUC with the easement, invoices related to the costs that they were incurring at their own expense, and "as built" drawings prepared by a licensed surveyor. The Customer Service Agreement also provides that the Halwigs and Nollers will provide DIUC with a bill of sale transferring ownership of the mains to DIUC upon completion. The Customer Service Agreement provides that:

Under the circumstances of the need for this agreement, there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

The installation of the replacement mains was finally completed and accepted by the engineer at the end of September 2018. All of the engineering costs, agency permitting, installation and other costs involved in replacing the water and sewer mains was paid for by the Halwigs and Nollers. Every item of paperwork required by DIUC has been delivered to DIUC. DIUC has accepted the installation and the Bill of Sale transferring ownership of the replacement mains to DIUC. The DHEC permit is now DIUC's responsibility. The project engineer has accepted the completion of the work as of September 28, 2018. At no time did DIUC offer any assistance and only provided the name of their preferred engineering firm.

Despite the fact that the Halwigs and the Nollers executed the Customer Service Agreement and complied with its terms, DIUC still refuses to provide service to the Halwigs' and Nollers' properties as it agreed to do so under the Customer Service Agreement. DIUC would not allow service to be restored even temporarily at that time for testing to make sure that it was properly connected to the homes. As of the date of this filing, service has not yet been restored to the Halwigs' and Nollers' homes.

Instead of complying with the Customer Service Agreement, DIUC has provided the Halwigs and the Nollers with an Addendum to the Customer Service Agreement, in which DIUC has

Public Service Commission of South Carolina, Halwig and Noller Complaint
 RE: Daufuskie Island Utility Commission filed November 16, 2018
 Page 3

demanded (1) payment of additional expenses never mentioned in the Customer Service Agreement, including its attorney's fees and taxes expected to be imposed on DIUC for the costs paid for by the Halwigs and Nollers for the replacement mains; and (2) a withdrawal and release of any and all claims and complaints the Halwigs and Nollers have asserted or may assert against DIUC before PSC or otherwise in regard to the installation of the Project Mains. DIUC has demanded execution of this Addendum prior to providing water and sewer service to the Halwigs' and Nollers' homes. Copies of the Customer Service Agreement and proposed Addendum to the Customer Service Agreement are attached with the correspondence referred to in this Complaint. Copies of the documentation for the engineering services provided by Thomas and Hutton, the contractor services provided by PINCO Construction, permitting by DHEC, and cost of equipment are available if requested.

The terms of the Customer Service Agreement between the Halwigs and Nollers and DIUC does not require that the Halwigs and Nollers pay any attorney fees or taxes that might be due and payable in the future by DIUC based upon the cost of installation of the replacement lines necessary for DIUC to provide service to the Halwigs and Nollers. The Agreement is clear that "[u]nder the circumstances of the need for this agreement, there will be no charge for administrative fees." (Agreement, Page 2). Taxes and attorney fees would be administrative fees. Legal fees are typical operating expenses and not included in the cost of Contributions in Aid of Construction or Customer Main Extension Fees.

While the Agreement does state that "in order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to **have the Project Mains installed** in accordance with the plans they solicited from Thomas & Hutton, **at their cost**" (emphasis added), the cost of installation does not include any ancillary costs incurred by DIUC, and certainly no speculative costs. Moreover, the setting of rates is not a DIUC decision and can only be set by the SC Public Service Commission, or potentially a court decision. The sharing by customers of all costs of DIUC for the facilities, services and related costs (such as taxes) is a decision of the PSC. The Halwigs and Nollers did not agree to pay a potential liability of DIUC, especially without notice, discussion or mention in the Agreement.

The Halwigs and the Nollers should never have had to pay for the replacement of the Mains, much less for the potential taxes and attorney fees of DIUC related to such replacement. Lines destroyed by a sinkhole, flood or other natural causes should not be the responsibility of the customers affected by the loss. DIUC has the following responsibility under the PSC regulations:

. . . unless specifically relieved in any case by the commission from such obligation, shall operate and maintain in safe, efficient and proper conditions all of its facilities and equipment used in connection with the services it provides to any customer up to and including the point of delivery into systems or facilities owned by the customer.

See R.103-540 and 740. When it is not possible to replace the infrastructure lost in the same place, the utility should not simply be relieved from replacing the infrastructure in another place.

Public Service Commission of South Carolina, Halwig and Noller Complaint
RE: Daufuskie Island Utility Commission filed November 16, 2018
Page 4

The PSC cannot allow a utility to shift the burden of water and sewer infrastructure replacement to those whose service was lost through damage to the infrastructure of the utility. Repairing damage and replacing systems as necessary is part of running a utility business. Good business practice, especially when profit is built in by the rate structure approved by a government authority, must include funds for replacement of the critical infrastructure necessary to maintain homes in a habitable condition. The costs demanded here are not for any installation at these individual customers houses, that cost was excluded by DIUC in calculating the cost to then tax and in determining what it would accept responsibility for maintaining. These customers have been forced to pay for replacement mains that are DIUC's responsibility.

Despite the language of the Agreement stating that there will be "no charge for administrative fees," DIUC continues to demand, prior to restoration of service, payment of an estimated tax it may bear on the amount paid by the customers for the replacement system DIUC refused to replace. The future imposition of a federal tax on the cost paid for installation is not a cost under a Customer Main Extension Fee (R.103-502.3). The Public Service Commission has not yet held a hearing or made a final decision regarding the amount of a tax or how any tax that may be due under such a situation would be handled in setting future rates.² The imposition of the full tax amount expected based solely on the cost of installation also does not account for the potential deductible loss of the system being replaced, depreciation or other factors in determining tax liability.

DIUC has argued that the requirement to Preserve Tax Benefits in the referenced Docket should be in a future rate relief proceeding.³ However, the mains installed by the Halwigs and the Nollers are replacements for the mains that were destroyed by the storm. They are not new lines and should not be treated like a contribution to the utility like new lines. The treatment of the "income" from the payments made by these customers cannot be compared to voluntary contributions in aid of construction or a customer main extension fee. The refusal of DIUC to replace the lines or make any effort to provide even temporary service made the payment by these customers involuntary; without replacing the system themselves the homes they built could not be used and could be condemned. These customers being forced to pay for the replacement mains should not be allowed, the replacement is DIUC's responsibility. Most importantly as set for the above, the Agreement does not include DIUC costs of any kind be paid by these customers, only the cost of installation.

Further, it would be inappropriate to charge the Halwigs and the Nollers a tax or attorney fees for the replacement of lines that serve all of the lots along Driftwood Cottage Lane above the area where erosion destroyed the road. The replacement mains connect from Martinangel Lane to the lines under Driftwood and not directly to these customers' homes. The replacement Mains only connect one street to the next. The only equipment installed onto the Halwigs' or Nollers' property were the grinder pumps. These pumps had to be replaced in order to manage the change

² PSC Docket #2017-381-A.

³ PSC Docket #2017-381-A: October 10, 2018 Supplemental Filing. "DIUC requests the Commission find that all effects of the Tax Act on DIUC's allowable expenses and revenues may be determined only in the context of a rate relief proceeding during which all revenues and expenses are to be considered in setting a just and reasonable rate." (at page 4).

Public Service Commission of South Carolina, Halwig and Noller Complaint
 RE: Daufuskie Island Utility Commission filed November 16, 2018
 Page 5

in water flow to the replacement lines. DIUC has identified the grinder pumps as the exclusive responsibility of the owners and has excluded grinder pumps from the equipment transferred to DIUC. DIUC has accepted responsibility for the operation and maintenance of the replacement mains, which provide service to all of the lots along Driftwood Cottage Lane above the wash out.

The refusal to turn on the water and sewer service at the Halwigs' and Nollers' homes after completion of the permitting and installation of the replacement lines is not reasonable and shows a lack of good faith on the part of DIUC. All requirements under the Agreement have been met and satisfied. No further amounts are due and payable to DIUC under the Agreement. The only items allegedly in dispute from DIUC's perspective are its attorney's fees and as yet not due potential tax liability.⁴ In addition, DIUC has demanded in the Addendum to the Customer Service Agreement that the Halwigs and Nollers provide a withdrawal and release of any and all claims and complaints the Halwigs and Nollers have asserted or may assert against DIUC before PSC or otherwise in regard to the installation of the Project Mains. These new demands are not reasonable and would require the customers to relinquish significant rights in exchange for service that DIUC already has an obligation to provide. There is no regulatory requirement for the notion behind DIUC's position throughout the two (2) year plus lack of service that "it is not appropriate for the Company to incur such costs which would then be passed on to its other customers through the rate setting process."⁵ The decision to 'pass on' any costs is a decision for the PSC and not DIUC, is not certain, and, under the circumstances, fails to support the demands made on DIUC's own customers, especially when all costs of installation have been paid by the Halwigs and the Nollers, who have no recourse to other water providers. Significantly as well, these customers had no choice but to pay for replacement lines because DIUC forced them to choose to do that or lose their beachfront homes. These customers are still without service.

These customers' homes have been without water and sewer service for over two years, and the lack of service has caused a great deal of loss to both families. DIUC's refusal to provide service continues in the face of installation of replacement mains by the customers at the customers' own cost and every item of paperwork required by DIUC having been delivered to DIUC, which has accepted the installation, including the Bill of Sale for the replaced system from the Halwigs and Nollers. DIUC has still refused to return service to these homes, based on the demand for payment of the attorney's fees and potential tax liability and release of any claims against DIUC. Such refusal to restore service after the fulfillment of the Agreement by the Halwigs and Nollers violates the DIUC commitment made to them in December of 2015: "Daufuskie Island Utility Company (Company) will continue to preserve, maintain and provide service to all customers within its service area, including service to the Halwig property.we will continue to provide utility service as originally designed and in compliance with all regulatory requirements." The water and sewer service has not been restored in order for these families to be able to use their properties, and DIUC has failed to live up to its responsibilities.

⁴ It is possible the Tax Act triggering the potential new tax will be amended before any such tax is due.

⁵ December 10, 2015 DIUC correspondence to Halwig counsel.

Continuation of Relief Requested

The PSC should require that DIUC restore water and sewer service to its customers Halwig and Noller immediately and that DIUC reimburse the Halwigs and the Nollers for all costs paid to replace the mains serving the portion of Driftwood Cottage Lane above the road wash out for and such other and further relief as the PSC may deem just and proper.

Daufuskie Island Utility Company, Inc.

725 N. Hwy A1A, Suite B103, Jupiter, FL 33477
888-635-7878

BY EMAIL

January 30, 2018

Ms. Bev Noller
36 Driftwood Cottage Ln
Daufuskie Island, SC 29915

Dr. Michael Halwig
46 Driftwood Cottage Ln
Daufuskie Island, SC 29915

RE: Customer Service Agreement for Customers located at
36 & 46 Driftwood Cottage Lane

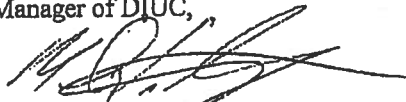
This Customer Agreement is necessary because of severe and continuous storm and tidal ocean erosion that destroyed the section of road located between 22 and 33 Driftwood Cottage Ln, containing Daufuskie Island Utility Company's ("DIUC") water and sewer facilities. Because these facilities could not be replaced as originally designed, DIUC is unable to provide service to customers located at 36 & 46 Driftwood Cottage Ln ("Customers"). As an alternative, DIUC provided Customers with a "Letter of Intent" to serve the customers by connecting to existing mains along Martinangel Ln. and install new mains and facilities ("Project Mains") through the Melrose Golf course to the Customers premises.

DIUC will serve Customers under the following terms of this agreement:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed in accordance with the plans they solicited from Thomas & Hutton, at their cost.
2. The installation of the Project Mains must comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities, and approved by DIUC.
3. Customers will provide DIUC with the following documents: written approval by the owners of the Melrose golf course for the Project Mains installation; easements of sufficient width for the perpetual access to repair, replace and maintain the Project Mains, invoices pertaining to all costs incurred including but not limited to, engineering, permitting and construction.
4. Upon completion of the Project Mains installation, Customers must submit detailed "as built" drawings prepared by a licensed surveyor.
5. Upon completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes.
6. The Customers shall not for any reason be entitled to any refunds with respect to the Project Mains or any future extension or use of those facilities.

Under the circumstances of the need for this agreement, there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DJUC,



Mike J. Guastella
Vice President- Operations



Ms. Bev Noller

Dr. Michael Halwig

Cc: Willie Morgan
Chad Campbell

054041 | 09000

Daufuskie Island Utility Company, Inc.725 N. Hwy A1A, Suite B103, Jupiter, FL 33477
888-635-7878BY
EMAIL

January 30, 2018

Ms. Bev Noller
36 Driftwood Cottage Ln
Daufuskie Island, SC 29915Dr. Michael Halwig
46 Driftwood Cottage Ln
Daufuskie Island, SC 29915

RECEIVED

FEB 07 2018

NELSON, MULLINS

RE: Customer Service Agreement for Customers located at
36 & 46 Driftwood Cottage Lane

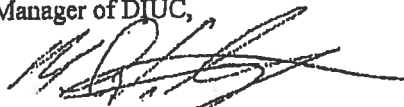
This Customer Agreement is necessary because of severe and continuous storm and tidal ocean erosion that destroyed the section of road located between 22 and 33 Driftwood Cottage Ln, containing Daufuskie Island Utility Company's ("DIUC") water and sewer facilities. Because these facilities could not be replaced as originally designed, DIUC is unable to provide service to customers located at 36 & 46 Driftwood Cottage Ln ("Customers"). As an alternative, DIUC provided Customers with a "Letter of Intent" to serve the customers by connecting to existing mains along Martinangel Ln. and install new mains and facilities ("Project Mains") through the Melrose Golf course to the Customers premises.

DIUC will serve Customers under the following terms of this agreement:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed in accordance with the plans they solicited from Thomas & Hutton, at their cost.
2. The installation of the Project Mains must comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities, and approved by DIUC.
3. Customers will provide DIUC with the following documents: written approval by the owners of the Melrose golf course for the Project Mains installation; easements of sufficient width for the perpetual access to repair, replace and maintain the Project Mains, invoices pertaining to all costs incurred including but not limited to, engineering, permitting and construction.
4. Upon completion of the Project Mains installation, Customers must submit detailed "as built" drawings prepared by a licensed surveyor.
5. Upon completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes.
6. The Customers shall not for any reason be entitled to any refunds with respect to the Project Mains or any future extension or use of those facilities.

Under the circumstances of the need for this agreement there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DIUC,



Mike J. Guastella
Vice President- Operations

G---:p--~
Ms. Bev Noller

 2/1/18
Dr. Michael Helwig

Cc: Willie Morgan
Chad Campbell

ADDENDUM TO CUSTOMER SERVICE AGREEMENT

WHEREAS, Michael Halwig, Nancy Halwig, Beverly Noller and Stephen Noller (together the "Customers") and Daufuskie Island Utility Company, Inc. ("DIUC") entered into a Customer Service Agreement ("CSA") (copy attached hereto as **Exhibit A**);

WHEREAS, pursuant to the CSA, the Customers caused to be installed certain water mains and facilities ("Project Mains" as referenced in the CSA);

WHEREAS, the Project Mains includes the Curb Stops and Meters installed by DIUC but does not include any items located on the premises owned by the Customers (the Premises");

WHEREAS, the Customers represent to the best of their knowledge that the Project Mains comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities;

WHEREAS, the Customers have provided DIUC with an acknowledged bill of sale transferring the Project Mains to DIUC (copy attached hereto as **Exhibit B**);

WHEREAS, the Customers and DIUC wish to enter into this Addendum to the CSA in order to clarify the obligations between them pursuant to the CSA and to resolve all issues between them so as to avoid the costs of and delays associated with having disputed issues resolved by litigation, mediation, arbitration, or other complaint procedures or processes;

WHEREAS, the Drawings of Record/As-Built Drawings (copy attached hereto as **Exhibit C**), depict the newly installed Project Mains to be owned, operated, and maintained by DIUC and also depict certain items located on the Customers' property which will remain the property of and responsibility of the Customers;

WHEREAS, pursuant to NARUC prescribed Uniform System of Accounts, when DIUC incorporates the Project Mains into its system it will book the cost of the Project Mains as

Contributions In Aid Of Construction;

WHEREAS, pursuant to the recent Tax Cuts and Jobs Act, DIUC will incur a tax liability at a rate of \$33.24 for every \$100.00 of the amount booked as Contributions In Aid Of Construction;

WHEREAS, pursuant to Paragraph 3 of the CSA, the Customers have provided invoices (copies attached hereto as **Exhibit D**) for costs associated with the Project Mains as follows:

PINCO	\$ 69,337.72 ¹
Thomas and Hutton	\$ 39,346.35
Joe Davis	\$ 2,650.00
Sea Island Land Survey	\$ 1,300.00
SC DHEC	\$ 250.00
Transportation Costs	<u>\$ 70.00</u>
TOTAL	\$ 112,954.07

WHEREAS, DIUC has provided the Owners with a statement from its legal counsel (copy attached hereto as **Exhibit E**)² indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters contained in the CSA;

WHEREAS, DIUC has provided the Owners with a statement (copy attached hereto as **Exhibit F**) indicating that DIUC incurred ferry transportation costs of \$70.00 for the Customers' engineer Fred Sororian; and

WHEREAS, as a result of incorporating the Project Mains into its utility plant in service, DIUC will incur a tax obligation of \$37,545.93, which is equal to 33.24% of \$112,954.07.

THEREFORE, in order to resolve all questions as to the obligations of the Owners and DIUC pursuant to the CSA, the Owners and DIUC agree:

¹ Supplemental Schedule from Pinco totaling \$76,487.72 less \$7,150.00 for Items 6 and 7 which will remain the property and responsibility of the Customers.

² The Customers and DIUC agree that production of the invoice does not constitute a waiver of any work product protections or the attorney-client privilege.

1. The Customers shall pay to DIUC \$3,900.00 for legal costs and \$37,545.93 for taxes incurred. Said payment shall be made by cashiers check payable to Daufuskie Island Utility Company, Inc. and delivered to: Thomas P. Gressette, Jr., Esq., Walker Gressette Freeman & Linton, LLC, 66 Hasell Street, Charleston, SC 29401.

2. The Customers will withdraw and release any and all claims and complaints they have asserted or may assert against DIUC in regard to the installation of the Project Mains, including but not limited to, those issues raised by letter from Newman Jackson Smith, Esq. to Chad Campbell dated September 11, 2018 (copy attached hereto as **Exhibit G**).

IT IS SO AGREED THIS ____ DAY OF OCTOBER, 2018.

Witness

Stephen A. Noller
Date: _____

Witness

Beverly P. Noller
Date: _____

Witness

John M. Halwig
Date: _____

Witness

Nancy D. Halwig
Date: _____

Daufuskie Island Utility Co., Inc.

Witness

Signed: _____
Printed Name: _____
Title: _____
Date: _____

Easterling, Deborah

280260

From: Thomas P. Gressette, Jr. <Gressette@WGFLAW.com>
Sent: Monday, November 19, 2018 6:37 PM
To: Campbell, Chad; PSC_Contact; Jack Smith
Subject: Recent Submission Regarding DIUC
Attachments: 11-19-2018, DIUC Initial Informal Correspondence re Halwig-Noller Complaint (with Exhibits).pdf

Good evening.

As counsel for Dauluskie Island Utility Company, Inc. I write to provide the attached correspondence.

Thank you.



THOMAS P. GRESSETTE, JR.



G. Trenholm Walker
Thomas P. Gressette, Jr.
Ian W. Freeman
John P. Linton, Jr.
Charles P. Summerall, IV

THOMAS P. GRESSETTE, JR.
Direct: 843.727.2249
Email: Gressette@WGFLAW.com

November 19, 2018

Via Email and US Mail

Mr. Chad Campbell
Office of Regulatory Staff
Supervisor, Consumer Services
1401 Main Street, Suite 900
Columbia, South Carolina 29201
Email: ccampbe@regstaff.sc.gov

Via Email and US Mail

Office of the Clerk
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210
Email: contact@psc.sc.gov

Via Email and US Mail

Newman Jackson Smith
Nelson Mullins Riley & Scarborough LLP
151 Meeting Street I Sixth Floor
Charleston, SC 29401-2239
Email: jack.smith@nelsonmullins.com

RE: Daufuskie Island Utility Company, Inc. ("DIUC")
Complaint of Michael and Nancy Halwig and Beverly Noller
Initial Informal Response
Docket Number TBD

Dear Mr. Campbell:

My office received a courtesy copy of correspondence related to the above-referenced matter. I am going to be out of the office beginning tomorrow and will not be available until December 2, 2018, so I wanted to provide you with at least an initial indication of DIUC's position. This is meant to be an initial, informal response and DIUC reserves the right to file testimony, exhibits, and additional responsive information should the same be necessary.

November 19, 2018
Page 2 of 3

Michael Halwig, Nancy Halwig, Beverly Noller and Stephen Noller (together the "Customers") own property on Daufuskie Island, South Carolina within the service area for Daufuskie Island Utility Company, Inc. ("DIUC"). The Customers were served by DIUC until a hurricane destroyed the roadway and DIUC infrastructure that allowed DIUC to service the Customers' property. After the on-island Homeowners' Association rebuilt the roadway, DIUC re-installed infrastructure and resumed water and sewer service to the Customers. After Hurricane Matthew again washed out the roadway and the DIUC infrastructure, the HOA refused to rebuild the roadway. DIUC consulted with ORS and understood that it was not obligated to purchase additional easements to install for a third time infrastructure to serve the Customers.

The Customers nonetheless wished to obtain service. So, the Customers and DIUC entered into a Customer Service Agreement ("CSA") (copy attached hereto as Exhibit A). Pursuant to the CSA, the Customers would construct infrastructure that upon approval by DIUC could become part of the DIUC system allowing DIUC to resume serving the Customers. Some of the installed items would be on the Customer's property and would remain under the Customers' ownership and care. Under existing law DIUC would not be taxed for the new items which would be recorded as contributions in aid of construction. DIUC agreed to waive any administrative costs that it might incur from Guastella Associates, DIUC's manager.

The CSA contains the following relevant provisions:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed. The purpose of this provision was to prevent DIUC's other customers from being forced to subsidize a third installation of infrastructure to the Customers' property.

5. Upon Completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes. This provision specifically explains that the Customers and DIUC are agreeing the Project Mains will become the property of DIUC and they will be booked by DIUC as contributions in aid of construction.

Pursuant to the Tax Cuts and Jobs Act (TCJA), DIUC will be required to pay taxes for the contributions in aid of construction related to the Customers' contributions to the DIUC system. Under the TJCA, DIUC will incur a tax liability at a rate of \$33.24 for every \$100.00 of the amount booked as contributions in aid of construction. The amount taxed will include costs for the infrastructure as well as associated engineering and labor costs. The TCJA was in effect when the CSA was executed.

After construction was completed and DIUC received all the necessary documentation required by the CSA, counsel provided a document outlining the taxes due. Because counsel for the Customers had recently initiated an informal complaint with ORS, the document was intended to evidence the transaction was complete and that all conflicts between the Customers and DIUC had been amicably resolved. The document was captioned as "Addendum to Customer Service Agreement," which the Customers appear to have perceived to be some sort of renegotiation of the CSA. That was not the purpose of the document, as explained by correspondence from DIUC counsel (copy attached hereto as Exhibit B).

November 19, 2018
Page 3 of 3

DIUC has obtained necessary documentation to complete the transaction described in the CSA and invoices for the following costs associated with the Project Mains:

PINCO	\$ 69,337.72 ¹
Thomas and Hutton	\$ 39,346.35
Joe Davis	\$ 2,650.00
Sea Island Land Survey	\$ 1,300.00
SC DHEC	\$ 250.00
Transportation Costs	<u>\$ 70.00</u>
	\$ 112,954.07
Tax Rate	<u>33.24%</u>
Tax Due	\$ 37,545.93

DIUC provided the Customers with a statement from its legal counsel indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters contained in the CSA. The legal fees are a cost to DIUC as part of the CSA and DIUC is not authorized to pass that cost on to its other customers.

Based upon the terms of the CSA and all the information available to date, the Customers are obligated to pay the tax obligation of \$37,545.93, which is equal to 33.24% of \$112,954.07, that DIUC will incur, plus reimbursement for DIUC legal fees in the amount of \$3,900.

DIUC remains willing to cooperate with the Customers and to assist as it is able. However, DIUC is not at this time authorized to pass on to its ratepayers these costs attributable solely to the reinstallation of the Project Mains for the Customers. To ensure its collection of these costs and to prevent DIUC's other customers from bearing the burden of the same, DIUC requires remittance per the CSA prior to activating service for the Customers.

I hope this letter will be sufficient to explain the circumstances and to resolve this matter. However, if additional information is required please allow DIUC ample time to respond taking into account my return to the office on December 2, 2018.

Sincerely,

/s/

Thomas P. Gressette, Jr.

Enclosures (as stated)

cc: DIUC, Attention Guastella Associates, Inc.

¹ Supplemental Schedule from Pinco totaling \$76,487.72 less \$7,150.00 for Items 6 and 7 which will remain the property and responsibility of the Customers.

054641/09000

Daufuskie Island Utility Company, Inc.725 N. Hwy A1A, Suite B103, Jupiter, FL 33477
888-635-7878BY
EMAIL

January 30, 2018

Ms. Bev Noller
36 Driftwood Cottage Ln
Daufuskie Island, SC 29915Dr. Michael Halwig
46 Driftwood Cottage Ln
Daufuskie Island, SC 29915**RECEIVED**

FEB 07 2018

NELSON, MULLINS

RE: Customer Service Agreement for Customers located at
36 & 46 Driftwood Cottage Lane

This Customer Agreement is necessary because of severe and continuous storm and tidal ocean erosion that destroyed the section of road located between 22 and 33 Driftwood Cottage Ln, containing Daufuskie Island Utility Company's ("DIUC") water and sewer facilities. Because these facilities could not be replaced as originally designed, DIUC is unable to provide service to customers located at 36 & 46 Driftwood Cottage Ln ("Customers"). As an alternative, DIUC provided Customers with a "Letter of Intent" to serve the customers by connecting to existing mains along Martinangel Ln. and install new mains and facilities ("Project Mains") through the Melrose Golf course to the Customers premises.

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Under the circumstances of the need for this agreement there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DIUC,



Mike J. Guastella
Vice President- Operations

G---:p--~
Ms. Bev ~~NOIIC~~

Michael Halwig 2/1/18
Dr. Michael Halwig

Cc: Willie Morgan
Chad Campbell

From: Thomas P. Gressette, Jr.
 To: Jack Smith
 Subject: RE: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)
 Date: Wednesday, October 31, 2018 2:35:00 PM

Jack,

Thanks for your letter. I apologize if I created confusion by the Addendum I recently forwarded. DIUC did not intend to change the Customer Service Agreement ("CSA"); my goal was just to assemble and identify all the various documents in one place for the parties. If there is a better way to handle the paperwork, I am certainly open to that.

DIUC does not want to alter the terms of the CSA. As we have discussed, DIUC cannot charge its other customers for the \$3,900.00 for legal costs and \$37,545.93 for taxes DIUC will incur for the Contributions in Aid of Construction. In order to protect other customers from sharing in the cost responsibility, as set forth in the CSA, the Halwigs and Nollers must bear that cost.

Best,

Tom

From: Margaret Marks <margaret.marks@nelsonmullins.com> **On Behalf Of** Jack Smith
 Sent: Wednesday, October 31, 2018 1:52 PM
 To: Thomas P. Gressette, Jr. <Gressette@WGFLAW.com>
 Subject: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)

Please see the attached letter.

Best,

Jack



NELSON MULLINS

Jack Smith

jack.smith@nelsonmullins.com | 843.534.4309

151 Meeting Street Suite 600 | Charleston SC 29401

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read,

EXHIBIT B

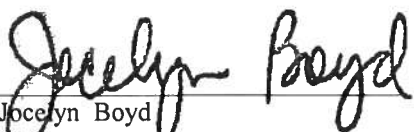
print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-364-E

IN RE:	Stephen and Beverly Noller and Michael and Nancy Halwig)	
	Complainants/ Petitioners)	
)	
	v.)	NOTICE
)	
	Daufuskie Island Utility Company, Incorporated)	
	Defendant /Respondent)	

TO: THE ABOVE NAMED DEFENDANT/RESPONDENT

PLEASE TAKE NOTICE that you are hereby required, pursuant to S. C. Code Ann. Regs. 103-826 and 103-830 of the Commission's Rules of Practice and Procedure, to answer the allegations contained in the Complaint/Petition filed herein, a copy of which is herewith served upon you, and further to serve a copy of your Answer to said Complaint/Petition upon the *Public Service Commission of South Carolina, Attn: Clerk's Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210; the Complainants/Petitioners; and the Office of Regulatory Staff, 1401 Main Street, Suite 900, Columbia, South Carolina 29201* and to file your Answer with certification of service with the Public Service Commission at the address below; with the Complainants/Petitioners; and with the Office of Regulatory Staff within thirty (30) days of receipt of the Complaint/Petition, exclusive of the day of such service, and if you fail to answer the Complaint/Petition within the time aforesaid, the Complainants/Petitioners may apply to the Commission for the relief demanded in the Complaint/Petition.


 Jocelyn Boyd
 Chief Clerk & Administrator
 Public Service Commission of SC
 101 Executive Center Drive, Suite 100
 Columbia, SC 29210

December 4, 2018

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

DOCKET NO. 2018-364-E

IN THE MATTER OF:

Stephen and Beverly Noller and Michael and Nancy Halwig)
Complainants/Petitioners)
v.)
Daufuskie Island Utility Company, Incorporated)
Defendant/Respondent)

CERTIFICATE OF SERVICE
U.S. Postal Service

I, Colanthia B. Alvarez, do hereby certify that I have on the date indicated below served the following named individual(s) with one (1) copy of the Complaint/Petition and one (1) copy of the 30 Day Notice by Registered U.S. Certified Mail Restricted Delivery, with sufficient postage attached and return address clearly marked.

PARTIES SERVED:

Terry R. Lee
9688 Speedway Blvd.
Hardeeville, South Carolina 29927

I, Colanthia B. Alvarez, do hereby certify that I have on the date indicated below served the following named individual(s) with one (1) copy of the Complaint/Petition and one (1) copy of the 30 Day Notice and one (1) copy of the Notice of Hearing by Electronic Service via PSC Docket Management System.

PARTIES SERVED:

Thomas P. Gressette Jr., Esquire
Walker Gressette Freeman Linton LLC
Post Office Box 22167
Charleston, SC 29413

Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia South Carolina 29201

Counsel for Complainants/Petitioners was served a copy of the 30-Day Notice and Notice of Hearing by Electronic Service via PSC Docket Management System.

Newman Jackson Smith, Esquire
Nelson Mullins Riley & Scarborough LLP
Post Office Box 1806
Charleston, SC 29401

Clerk's Office
Public Service Commission of South Carolina

By: Colanthia B. Alvarez
Colanthia B. Alvarez

Columbia, South Carolina
December 4, 2018

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

CLERK'S OFFICE

RESCHEDULED NOTICE OF HEARING

DOCKET NO. 2018-364-WS

Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent

PLEASE TAKE NOTICE that a hearing on the above matter, pursuant to S.C. Code Ann. Regs. 103-817, has been scheduled to begin **on Wednesday, February 20, 2019, at 10:00 a.m.**, before the Commission in the Commission's Hearing Room at 101 Executive Center Drive, Suite 100, Saluda Building, Columbia, South Carolina 29210.

For the most recent information regarding this docket, including changes in scheduled dates included in this Notice, please refer to www.psc.sc.gov and ***Docket No. 2018-364-WS***.

Persons seeking information about the Commission's procedures should contact the Commission at (803) 896-5100 or visit its website at www.psc.sc.gov.

12/4/18